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C O N F I D E N T I A L SECTION 01 OF 03 KUALA LUMPUR 000949

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TAGS: [PHUM](#) [PREL](#) [PGOV](#) [KDEM](#) [KWMN](#) [SOCI](#) [KISL](#) [MY](#)  
SUBJECT: MALAYSIA'S HIGHEST COURT RULES AGAINST APOSTATE  
LINA JOY

REF: A. 05 KUALA LUMPUR 3784  
[1](#)B. 06 KUALA LUMPUR 680  
[1](#)C. KUALA LUMPUR 705  
[1](#)D. KUALA LUMPUR 560  
[1](#)E. KUALA LUMPUR 232

Classified By: Political Section Chief Mark D. Clark for reasons 1.4 (b)  
) and (d).

#### Summary

[1](#)1. (C) Malaysia's apex court ruled on May 30 that Muslims who seek to apostatize may not do so outside the Shari'a court system. In a 2-1 decision in the case of apostate Lina Joy, the Federal Court ruled that the National Registration Department (NRD) may only change a Malaysian Muslim's official religious designation upon receipt of written approval from a Shari'a court. Because Shari'a courts have allowed apostasy only in very rare instances, the Federal Court's ruling appears to effectively preclude Muslims from apostatizing in Malaysia. While the country's largest Muslim religious NGOs praised the ruling, the dissenting Federal Court justice called it "discriminatory and unconstitutional." Non-Muslim political and religious leaders also spoke out strongly against the ruling. The split decision was the latest in a series of court decisions on religious matters that followed the same pattern of a non-Muslim judge being overriden by the views of two Muslim judges. The apparent religion-based rift in the judiciary is symptomatic of the larger societal divide between Muslims and non-Muslims here. Because of the nature of the case, the Lina Joy decision may have limited application to other highly sensitive cases related to Shari'a, but it continues a trend in which Malaysia's civil courts have ceded jurisdiction to the Shari'a courts. End Summary.

Once a Muslim, Always a Muslim in Malaysia

[1](#)2. (U) Malaysia's highest judicial body, the Federal Court, on May 30 upheld lower court rulings that Muslims attempting to apostatize must first obtain approval from a Shari'a court. In a 2-1 decision, the Federal Court found that the National Registration Department (NRD) correctly refused to change the religious affiliation listed on the national identity card of Lina Joy, an ethnic Malay woman who converted from Islam to Catholicism in 1998. Joy did not obtain Shari'a court approval for her apostasy. She ignored the Shari'a court system, as she believed that neither a Shari'a court nor any other Islamic religious authority would be willing to confirm her renunciation of Islam. The Federal Court's decision effectively precludes the apostasy of Malaysian Muslims, as Shari'a courts have granted only a

handful of apostasy requests over the past several years.

#### Muslim Versus Non-Muslim Justices

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¶3. (U) Writing for the majority in his 41-page ruling, Malaysia's Chief Justice Ahmad Fairuz Sheikh Abdul Halim stated, "If non-Muslims are converting into Islam, they must go through the Shari'a courts. Therefore, based on the concept of necessary implication, if one chooses to exit Islam, one must go through the same authorities." The Chief Justice continued, "This does not conflict with Article 11 (a section of Malaysia's constitution) that says every 'person has a right to profess and practice his religion.' Article 11 cannot be interpreted so widely as to cancel out all laws that a Muslim is required to execute and abide by. This is because Islam has a special position in the Federal Constitution which is different from other religions. Therefore, Article 11 should not be interpreted as a supreme right; the right to profess and practice a religion is subject to the religion that governs the individual. In short, she cannot, at her own whim, simply enter or leave (Islam)."

¶4. (U) Justice Richard Malanjum, a Catholic from Sarawak, wrote a 57-page dissent. He summarized his opinions in comments to the court, stating that the NRD's demands on Joy were "discriminatory and unconstitutional." He said, "In some states, apostasy is a crime. Hence, to expect the appellant (Lina Joy) to apply for a certificate of apostasy - when to do so would likely expose her to a range of punishments under Islamic law - is, in my view, unreasonable." He criticized the NRD for requiring "an act (i.e. getting written approval from a Shari'a court to apostatize) that is almost impossible to perform." Malanjum

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also challenged the majority opinion's use of the concept of "necessary implication" or the "implied jurisdiction" of the Shari'a courts, arguing that "in matters of fundamental rights there must be as far as possible express authorization for curtailment or violation of fundamental freedoms."

#### Public Reaction Reflects Religious Rift

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¶5. (U) Muslim NGO leaders such as Yusri Mohamad, President of the Muslim Youth Movement of Malaysia (ABIM) and spokesman for Organizations to the Defense of Islam (PEMBELA), praised the Federal Court's ruling. In a press release on May 30 from PEMBELA, Mohamad stated, "We see this decision as vindicating and upholding the existing arrangement relating to the position of Islam and the Shari'a courts in the constitutional and legal setup of the country." Non-Muslim political and NGO leaders, on the other hand, expressed their dismay at the ruling. The Chairman of the Christian Federation of Malaysia, Catholic bishop Paul Tan Chee Ing, said his organization was "disturbed and saddened" by the ruling that "curtailed the fundamental right of an individual to profess and express his or her religion as provided for in Article 11."

¶6. (C) Joy's lead counsel, Cyrus Dass, told poloff on May 31, "The highest court in the country has refused to uphold the constitution." He claimed that Muslim judges in the High Court and Court of Appeals would use the Lina Joy ruling as a precedent to "push other cases that involve Muslims and non-Muslims to the Shari'a courts."

#### Comment

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¶7. (C) The Federal Court ruling against Lina Joy came as no surprise, though many had speculated the ruling in this sensitive case would be postponed until after the next general election. Most legal experts here expected issues

surrounding Muslim apostasy to remain firmly within the realm of the Shari'a court system. The split decision was perhaps the most interesting result to emerge from the ruling. Decisions from the High Court, Court of Appeals and Federal Court on matters of family law and religious preference have recently been made on a majority, rather than a unanimous, basis. Typically, two Muslim justices have overridden a dissenting opinion from a non-Muslim judge. This phenomenon occurred most recently in the Court of Appeal's split decision on the Subashini child custody and conversion case, in which two Muslim justices favored application of Islamic law over the dissent of a Hindu judge (ref C). The Muslim judges have been far more willing to cede secular court jurisdiction to the Shari'a courts in such cases, while non-Muslim justices have attempted to retain the jurisdictional sphere of responsibility and the constitutionally mandated superiority of Malaysia's secular courts. This separation within the judiciary along religious lines is symptomatic of a growing societal rift between Muslims and non-Muslims that we have highlighted in earlier reports (refs D and E).

18. (C) The nature of the Lina Joy case, revolving around NRD documentation procedures, may limit the decision's application as a precedent for other highly emotive cases involving Islam, a number of which remain under appeal. Nevertheless, the court's ruling reinforces a trend in which the secular courts have ceded jurisdiction to the Shari'a courts. The fact that the case involved an ethnic Malay apostate may mute reaction among Malaysia's non-Muslims, who are drawn from other ethnic groups. Other cases involving non-Malays could engender greater unease among Malaysia's sizable non-Muslim minorities.

19. (U) Embassy submits the following press guidance for the Department's consideration:

Q: What is the Department's reaction to the Malaysian Federal Court's refusal to allow Malaysian citizen Lina Joy to register her conversion from Islam to Christianity?

A: Religious freedom is a universally acknowledged right, espoused globally by declarations such as the UN Universal Declaration of Human Rights, which states that the right to religious freedom "includes the freedom to change... religion or belief." These freedoms are among the founding principles of the United States and are a cornerstone of the First Amendment of the U.S. Constitution. In accordance with our own national heritage and with universally recognized principles, the United States encourages nations to respect

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these rights for all people.

I refer you to the International Religious Freedom Report for more information on the status of religious practice and freedom in Malaysia.  
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